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IN THE
COURT OF APPEALS OF INDIANA

REDBUD ESTATE SALES, INC.	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A04-0412-CV-657
	)	
STATE OF INDIANA and	)	
INDIANA DEPARTMENT OF	)	
NATURAL RESOURCES,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gerald Zore, Judge
Cause No. 49D07-0304-PL-753

August 31, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Redbud Estates Sales, Inc. ("Redbud") appeals the trial court's dismissal of its complaint against the State of Indiana and the Indiana Department of Natural Resources. Because there has been no final judgment in this case, we dismiss the appeal as premature.

Facts and Procedural History

On October 10, 2002, Redbud filed a complaint against the State of Indiana and the Indiana Department of Natural Resources (collectively, "the DNR") raising contract and tort theories. On March 12, 2004, ICC Industries, Inc. ("ICC") filed a motion for leave of court to file an intervening defendant's cross-claim against the State of Indiana, which the trial court granted. ICC filed its cross-claim against the State on March 31, 2004.

On March 16, 2004, and September 9, 2004, Redbud's claims against the DNR were tried by the bench. ICC's cross-claim against the State was not considered at the time. At the conclusion of Redbud's case-in-chief, the DNR moved for dismissal. The trial was suspended while the trial court considered the motion. Each party filed a memorandum in support of its respective position. On November 8, 2004, the trial court entered the following order:

> Comes now the Defendant, Indiana Department of Natural Resources, by counsel, having filed a Motion for Judgment on the Evidence at the Close of Plaintiff's Evidence, and the Court being duly advised in the premises, grants the Motion.
>
> **IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED** that the Plaintiff's Complaint is dismissed.

Appellant's App. tab 4. After the trial court issued this order, the CCS reflects that the status of the case changed from "Open" to "Disposed." *See* Appellee's App. p. 6. Nevertheless, a review of the CCS does not show that ICC's cross-claim against the State has been disposed of. *See id.* at 1-7. Redbud now appeals the dismissal of its complaint against the DNR.

Discussion and Decision

Redbud appeals the dismissal of its complaint against the DNR, reaching the merits of the dismissal. The DNR responds, however, that "[t]his appeal should be dismissed because the order dismissing the claims of Redbud did not amount to a final judgment disposing of all claims against all parties." Appellee's Br. p. 6. In its reply brief, Redbud did not respond to the DNR's argument. We agree with the DNR and therefore dismiss the appeal.

"The rules governing Indiana trial and appellate proceedings generally restrict appellate recourse until after the entry of a final judgment or other final action by the trial court." *Allstate Ins. Co. v. Fields*, 842 N.E.2d 804, 806 (Ind. 2006), *reh'g denied*. "The authority of the Indiana Supreme Court and Court of Appeals to exercise appellate jurisdiction is generally limited to appeals from final judgments." *Id.* (citing Ind. Appellate Rules 4(A)(1), 5(A)). Specifically, Appellate Rule 2(H) provides that a judgment is a "final judgment" if:

> 1. it disposes of all claims as to all parties;
> 2. the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to

> fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
> 3. it is deemed final under Trial Rule 60(C);
> 4. it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
> 5. it is otherwise deemed final by law.

Ind. Appellate Rule 2(H). Pertinent to the case before us, a trial court judgment "as to one or more but fewer than all of the claims or parties" is a final appealable judgment *only* "when the court in writing expressly determines that there is no just reason for delay, and in writing expressly directs entry of judgment." *Fields*, 842 N.E.2d at 806 (quoting Ind. Trial Rule 54(B)). But a "judgment, decision or order as to less than all the claims and parties is not final." *Id.* (quoting T.R. 54(B)). Indiana Appellate Rule 14 makes an exception for appeals from certain kinds of interlocutory orders enumerated in the rule, none of which apply here, *see id.* at 806-07 (citing App. R. 14(A)), and for appeals from other interlocutory orders only if the trial court certifies its order to allow an immediate appeal, and the Court of Appeals accepts jurisdiction over the appeal, which did not occur here, *see id.* (citing App. R. 14(B)).

Here, the trial court's November 8, 2004, order dismissing Redbud's complaint against the DNR was to fewer than all of the claims or parties because ICC's cross-appeal against the State was still pending. Indeed, the trial court's order does not even mention ICC or its cross-claim against the State. Because this order was not a final judgment, to authorize an appeal the trial court should have "in writing expressly determine[d] that there is no just reason for delay, and in writing expressly direct[ed] entry of judgment," *see* T.R. 54(B), which it did not do. We therefore dismiss this appeal.

Dismissed.

DARDEN, J., and RILEY, J., concur.